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No. 83-276

In the Supreme Court of the United States

OCTOBER TERM, 1983

SELECTIVE SERVICE SYSTEM, ET AL., APPELLANTS

v.

MINNESOTA PUBLIC INTEREST RESEARCH GROUP, ET AL.

SELECTIVE SERVICE SYSTEM, ET AL., APPELLANTS

v.

BRADLEY BOE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JOINT APPENDIX

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JURISDICTIONAL STATEMENT FILED AUGUST 19, 1983
PROBABLE JURISDICTION NOTED DECEMBER 5, 1983

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* The opinion of the district court appears in the appendix to the jurisdictional statement and has not been reproduced.

Civil No. 3-82-1670

6-83*P2-DOE, JOHN;
P3-ROE, RICHARD; and
P4-POE, PAUL, (PLTFF.-INTERVENORS)

v.

D1 SELECTIVE SERVICE SYSTEM, Major-General Thomas K. Turnage, Director and
D2 UNITED STATES DEPARTMENT OF EDUCATION, Terrel H. Bell, Secretary, DEFENDANTS

CAUSE

Action for preliminary injunction of enforcement and challenging Constitutionality of Section 1113 of the Dept. of Defense Authorization Act of 1983.

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RELEVANT DOCKET ENTRIES

Date	Nr.	PROCEEDINGS
		CIVIL 3-82-1670 MPIRG vs. SELECTIVE SERVICE SYSTEM et al
11-23-82	1	COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF-SUMMONS ISSUED
	2	VERIFICATION OF COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
	3	NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION RETURNABLE BEFORE JUDGE Magnuson on Dec. 10, 1982 at 10:30 a.m. in St. Paul, Minnesota.
11-24-82	6	ORDER OF DISQUALIFICATION (Magnuson-J) that this action is resubmitted to Clerk for reassignment on Civil Rights List; this action is assigned to Judge Donald Alsop per Civil Rights List #810.
12-17-82	11	ANSWER
	12	DEFT'S MOTION FOR JUDGMENT ON THE PLEADINGS
12-20-82	13	PLTF. NOTICE OF MOTION & MOTION FOR LEAVE TO AMEND COMPLAINT, rtble. 1-10-83 at 9:30 a.m. before Judge Alsop
1-05-83	17	NOTICE OF MOTION AND MOTION TO INTERVENE AS PLAINTIFFS (COMPLAINT OF INTERVENING Pltffs attached) RETURNABLE BEFORE Judge Alsop on Jan. 10, 1983 at 9:30 a.m.
1-10-83	19	MINUTES OF PROCEEDINGS (ALSOP-J; LINDBERG-R) Ms. Suchman & Mr. Orbovich admitted to the bar of this court for purposes of this case only. Pltf. motion for pre. injunc. argued, submitted and taken under advisement. Briefs on intervention & standing due by 1-17-83.

Date	Nr.	PROCEEDINGS
1-25-83	23	ORDER (Alsop-J; 1-24-83) that pltff's mo. for leave to amend its complaint is GRANTED
	24	MEMORANDUM ORDER (Alsop-J; 1-24-83) that mo. of John Doe, Richard Roe and Paul Poe for leave to intervene is GRANTED; that complaint of intervening pltffs be served upon defts and filed with Clerk
	25	MEMORANDUM ORDER (Alsop-J; 1-24-83) that defts' mo. for judgment (treated as mo. for summ. judgment) as against MPIRG is GRANTED that Clerk enter judgment.
	26	JUDGMENT
	27	NOTICE TO COUNSEL (for docket entries 23, 24, 25, 26)
1-26-83	29	COMPLAINT FOR DECLARATORY JUDGMENT & INJUNCTIVE RELIEF OF PLTFFS John Doe, Richard Roe, and Paul Poe
	30	PLTFF-INTERVENORS' NOTICE OF MO. & MO. FOR TRO AND FOR PRELIMINARY injunction.
1-28-83	35	MINUTES OF PROCEEDINGS (Alsop-J, Lindberg-R) RE: Pltffs Motion for TRO - by conference call-denied
3-01-83	38	ANSWER OF DEFTS.
3-10-83	39	MEMORANDUM ORDER (Alsop-J; 3-09-83) that pltffs' motions for prelim. injunction are granted; that an injunction issue, w/o security
	40	PRELIMINARY INJUNCTION (Alsop-J; 3-09-83) that, until further order, defts and their agents, etc. are ENJOINED from enforcing Section 1113 of Dept. of Defense Authorization Act of 1983, Pub. L. No. 97-252, 96 Stat. 748 (1982) but are not enjoined from promulgating and adopting regulations pursuant to Section 1113 pending final disposition of this action
	41	NOTICE TO COUNSEL

Date	Nr.	PROCEEDINGS
3-18-83	45	NOTICE OF MOTION AND MOTION BY INTERVENOR-PLTFFS FOR SUMMARY JUDGMENT & PERMANENT INJUNCTION
4-18-83	48	DEFTS. NOTICE OF MO. & MO. FOR SUMMARY JUDGT.
	49	ATTACHMENTS ORIGINALLY W:DEFTS MEMORANDUM IN RE: SUMMARY JUDGT. MOTION (Separate)
6-16-83	53	MEMORANDUM ORDER (Alsop-J) that pltff's mos. for summary judgment are granted and defts' mo. for summary judgment is denied; that an injunction is issued as foll.: that defts and their agents are permanently enjoined from enforcing in any state section 1113 of Dept. of Defense Auth. Act of 1983 and are permanently enjoined from enforcing in any state regulations promulgated under section 1113 at Fed. Reg. 15578 (1980); further that judgment is entered that Section 1113 of Dept. of Defense Auth. Act of 1983, Pub. L., #97-252, 96 Stat. 748 (1982) is unconstitutional; that defts, U. S. Dept. of Education and Terrel Bell, send notice of entry of this order to student financial aid administrators at all colleges in U. S. by 6-30-83 and shall eliminate Statement of Registration Compliance on all aid forms by 6-30-83; that defts include wi. all aid forms sent out after 6-30-83 notice of entry of this order to inform students that they need not supply info. as to their Selective Svc. registration
	54	JUDGMENT
	55	PERMANENT INJUNCTION (Alsop-J)
	57	NOTICE TO COUNSEL - for docket entries #53, 54, 55, 56

Date	Nr.	PROCEEDINGS
6-20-83	59	ORDER (Alsop-J) that defts' mo. for stay pending appeal is denied
	60	NOTICE TO COUNSEL
6-21-83	61	NOTICE OF APPEAL BY DEFTS. FROM MEMORANDUM ORDER AND PERMANENT INJUNCTION (Alsop-J; 6-16-83) Copies to counsel.

Civil No. 3-83-0100

P1-BOE, BRADLY,
P2-COE, CARL, and
P3-FOE, FRANK, PLAINTIFFS

v.

D1-SELECTIVE SERVICE SYSTEM,
MAJOR-GENERAL THOMAS K. TURNAGE,
D2-UNITED STATES DEPARTMENT OF
EDUCATION, TERREL H. BELL,
Secretary, DEFENDANTS

CAUSE

28 U.S.C. Section 2201: To declare Section 1113 of DOD Authorization Act of 1983 unconstitutional

ATTORNEYS

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Date	Nr.	PROCEEDINGS
1-26-83	1	COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - summons issued (Related case #3-82-1670 assigned to Judge Alsop)
	2	PLTFF'S NOTICE OF MO. & MO. FOR TRO AND PRELIMINARY INJUNCTION. Ret. before Judge Alsop on at
		ASSIGNED TO JUDGE ALSOP per C.R. #772
2-01-83	4	PLTFFS NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT RETURNABLE BEFORE JUDGE Alsop on Feb. 14, 1983 at St. Paul, Minnesota.
2-02-83	5	ANSWER
1-28-83	6	MINUTES OF PROCEEDINGS)Alsop-J, Lindberg-R) RE: Pltffs Motion for TRO - by conference call-denied
3-01-83	9	ANSWER OF DEFTS.
3-10-83	10	MEMORANDUM ORDER (Alsop-J; 3-09-83) that pltffs' motions for prelim. injunction are GRANTED; that an injunction issue, w/o security
	11	PRELIMINARY INJUNCTION (Alsop-J; 3-09-83) that, until further order, defts and their agents, etc. are ENJOINED from enforcing Section 1113 of Dept. of Defense Authorization Act of 1983, Pub. L. No. 97-252, 96 Stat. 748 (1982) but are not enjoined from promulgating and adopting regulations pursuant to Section 1113 pending final disposition of this action
	12	NOTICE TO COUNSEL
4-18-83	16	DEFTS. MO. FOR SUMMARY JUDGT.
	17	ATTACHMENTS ORIGINALLY WITH DEFTS. MO. FOR SUMMARY JUDGT. (Separate)
	21	PLTFFS RENEWED MOTION FOR SUMMARY JUDGMENT

Date	Nr.	PROCEEDINGS
6-16-83	22	MEMORANDUM ORDER (Alsop-J) that pltff's mos. for summary judgment are granted and defts' mo. for summary judgment is denied; that an injunction is issued as foll.: that defts and their agents are permanently enjoined from enforcing in any state section 1113 of Dept. of Defense Auth. Act. of 1983 and are permanently enjoined from enforcing in any state regulations promulgated under section 1113 at 48 Fed. Reg. 15578 (1980); further that judgment is entered that section 1113 of Dept. of Defense Auth. Act. of 1983 Pub. L. #97-252, 96 Stat. 748 (1982) is unconstitutional; that defts, U. S. Dept. of Education and Terrel Bell, send notice of entry of this order to student financial aid administrators at all colleges in U. S. by 6-30-83 and shall eliminated Statement of Registration Compliance on all aid forms by 6-30-83; that defts. include wi. all aid forms sent out after 6-30-83 notice of entry of this order to inform students that they need not supply is as to their Selective Svc. registration
	23	JUDGMENT
	24	PERMANENT INJUNCTION (Alsop-J)
	26	NOTICE TO COUNSEL - for docket entries #22, 23, 24, 25
6-20-83	27	ORDER (Alsop-J) that defts' mo. for stay pending appeal is denied
	28	NOTICE TO COUNSEL
6-21-83	29	NOTICE OF APPEAL BY DEFTS. FROM MEMORANDUM ORDER AND PERMANENT INJUNCTION (Alsop-J; 6-16-83) Copies to counsel.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

Civ. No. 3-82-1670

MINNESOTA PUBLIC INTEREST RESEARCH GROUP (MPIRG) and JOHN DOE, RICHARD ROE and PAUL POE, PLAINTIFFS

vs.

SELECTIVE SERVICE SYSTEM, MAJOR-GENERAL THOMAS K. TURNAGE, Director, and UNITED STATES DEPARTMENT OF EDUCATION, TERREL H. BELL, Secretary, DEFENDANTS.

COMPLAINT OF PLAINTIFFS JOHN DOE, RICHARD ROE AND PAUL POE

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs JOHN DOE, RICHARD ROE and PAUL POE, through their attorneys, for their Complaint against defendants, state and allege as follows:

1. This is a civil action seeking to enjoin defendants from implementing and enforcing § 1113 of the Department of Defense Authorization Act of 1983, Pub. L. No. 97-252, 96 Stat. 748 (1982), to be codified at 50 U.S.C. App. § 462, and any regulations promulgated thereunder, and seeking a declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring that Section 1113 as cited above is un-

constitutional under the Constitution of the United States, Art. I, § 9, and the Fifth and Sixth Amendments thereof.

JURISDICTION

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331.

VENUE

3. Plaintiffs John Doe, Richard Roe and Paul Poe are all residents of the State of Minnesota. Venue properly lies with this Court pursuant to 28 U.S.C. § 1391(e)(4).

THE PARTIES

4. Plaintiff John Doe is a male resident of Minnesota who is 21 years of age. He is currently a full time student at a college or university in Minnesota. He has received financial assistance under Title IV of the Higher Education Act of 1965, and he intends to apply for financial aid under Title IV for the 1983-84 school year. He will be unable to complete his education at his college or university unless he receives financial aid. He is subject to Section 3 of the Selective Service Act, has not presented himself for and submitted to registration under Section 3, and, therefore, cannot file with his college or university a truthful statement of compliance with Section 3 and regulations issued thereunder.

5. Plaintiff Richard Roe is a male resident of Minnesota who is 19 years of age. He is currently a full time student at a college or university in Minnesota. He intends to apply for financial aid under Title IV for the 1983-84 school year. He may be unable to complete his education unless he receives financial aid. He is subject to Section 3 of the Selective Service Act, has not presented himself for and submitted to registration under Section 3, and, therefore, cannot file with his college or university a truthful statement of compliance with Section 3 and regulations issued thereunder.

6. Plaintiff Paul Poe is a male resident of Minnesota who is 21 years of age. He formerly attended a college or university in Minnesota where he received financial assistance under Title IV of the Higher Education Act of 1965. He is presently not a student and instead is working, primarily to earn money to resume his education in the Fall of 1983. He intends to apply for financial aid under Title IV for the 1983-84 school year. He will be unable to complete his education at his college or university unless he receives financial aid. He is subject to Section 3 of the Selective Service Act, has not presented himself for and submitted to registration under Section 3, and, therefore, cannot file with his college or university a truthful statement of compliance with Section 3 and regulations issued thereunder.

7. Plaintiffs file this Complaint under ficticious names to protect themselves from possible self-incrimination and to protect their rights to privacy and also because the United States government has engaged in a policy of selective prosecution of open opponents of the draft.

8. Defendant Selective Service System is an agency of the United States. Defendant Major-General Thomas K. Turnage is the Director of the Selective Service System.

9. Defendant United States Department of Education is an agency of the United States. Defendant Terrel H. Bell is the Secretary of the United States Department of Education.

FACTUAL BACKGROUND

10. On July 2, 1980, then President Jimmy Carter issued Presidential Proclamation 4771 (45 Fed. Reg. 45247) requiring that certain male citizens of the United States and other males residing in the United States, unless exempted by the Military Selective Service Act, present themselves for registration according to a schedule based on their calendar year of birth.

11. On September 8, 1982, the United States Congress and the President of the United States approved the Department of Defense Authorization Act of 1983, Pub. L.

No. 97-252, 96 Stat. 748 (1982) (hereinafter "Defense Authorization Act"). As part of the Defense Authorization Act, Section 1113 was approved, amending by adding new Subsection 12(f) to the Military Selective Service Act (50 U.S.C. App. § 462) (hereinafter "Selective Service Act"). A copy of the amendment is attached as "Exhibit A" to this Complaint.

12. The new Section 12(f) of the Selective Service Act provides, *inter alia*, that any person failing to comply with any draft registration requirement established pursuant to Section 3 of the Selective Service Act, 50 U.S.C. App. § 453, shall be ineligible for any form of financial aid for post-secondary education provided under Title IV of the Higher Education Act of 1965, 20 U.S.C. § 1070 *et seq.* (hereinafter "Higher Education Act"); that any person required to register pursuant to Section 3 of the Selective Service Act must file a statement of compliance with draft registration requirements in order to receive such educational assistance; and that the Secretary of Education, in consultation with the Director of the Selective Service System, shall be charged with the implementation and enforcement of such provisions.

13. Section 12(f) of the Selective Service Act applies to all funds allocated under Title IV of the Higher Education Act beginning June 30, 1983.

14. The application process for financial aid for the 1983-84 school year commences in January 1983.

COUNT ONE

15. Section 1113 of the Defense Authorization Act improperly determines the guilt of and imposes punishment upon specific individuals or an easily ascertainable group without the protections of a judicial trial.

16. As such, Section 1113 of the Defense Authorization Act is a Bill of Attainder and violates Article I, Section 9 of the Constitution of the United States.

COUNT TWO

17. Section 1113 of the Defense Authorization Act improperly forces certain students either to incriminate themselves when applying for financial aid or penalizes them for invoking their Fifth Amendment right against self incrimination.

18. Accordingly, Section 1113 of the Defense Authorization Act deprives individuals of their right against self incrimination and violates the Fifth Amendment.

COUNT THREE

19. Section 1113 of the Defense Authorization Act will have a disproportionate impact on minorities.

20. Section 1113 of the Defense Authorization Act therefore violates equal protection requirements of the Fifth Amendment of the United States Constitution.

COUNT FOUR

21. Section 1113 of the Defense Authorization Act discriminates on the basis of wealth.

22. Section 1113 of the Defense Authorization Act therefore violates equal protection requirements of the Fifth Amendment of the United States Constitution.

COUNT FIVE

23. Only males between the ages of 18 and 26 will be affected by Section 1113 of the Defense Authorization Act.

24. Section 1113 of the Defense Authorization Act discriminates on the basis of age, and therefore violates the equal protection requirements of the Fifth Amendment of the United States Constitution.

COUNT SIX

25. Only male students will be affected by Section 1113 of the Defense Authorization Act.

26. Section 1113 of the Defense Authorization Act discriminates on the basis of sex, and therefore violates the equal protection requirements of the Fifth Amendment of the United States Constitution.

COUNT SEVEN

27. Presidential Proclamation 4771 (45 Fed. Reg. 45247) was neither expressly nor impliedly exempted from the 30 day notice and comment requirement of 50 U.S.C. § 463(b). Since it became effective 21 days after it was published, it is invalid.

28. There is no valid requirement for persons to register under the Selective Service Act.

29. Denial of federal financial aid pursuant to Section 1113 of the Defense Authorization Act violates due process in that it denies federal financial assistance for post-secondary education for the failure to certify compliance with an invalidly promulgated Presidential Proclamation.

WHEREFORE, plaintiffs John Doe, Richard Roe and Paul Poe pray that:

1. Section 1113 of the Defense Authorization Act be adjudged and declared overly broad and unconstitutional under Article I, Section 9, and the Fifth and Sixth Amendments to the Constitution of the United States;

2. Defendants be permanently enjoined from implementing and enforcing the provisions of Section 1113 of the Defense Authorization Act, including the promulgation of any regulations thereunder;

3. Plaintiffs John Doe, Richard Roe and Paul Poe be awarded their costs and disbursements of this action, including reasonable attorneys' fees; and

4. This Court grant such other relief as it deems appropriate and equitable.

Dated: January 25, 1983.

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WILLIAM J. KEPPEL

/s/ James B. Lynch
JAMES B. LYNCH

/s/ James E. Dorsey III
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VERIFICATION

I have personally reviewed this Complaint with Plaintiffs John Doe, Richard Roe and Paul Poe and each has read it and knows the contents thereof; all have sworn that it is true and correct to the best of their knowledge.

/s/ William J. Keppel
WILLIAM J. KEPPEL

EXHIBIT A

ENFORCEMENT OF MILITARY SELECTIVE SERVICE ACT

SEC. 1113. (a) Section 12 of the Military Selective Service Act (50 U.S.C. App. 462) is amended by adding after subsection (e) the following new subsection:

"(f) (1) Any person who is required under section 3 to present himself for and submit to registration under such section and fails to do so in accordance with any proclamation issued under such section, or in accordance with any rule or regulation issued under such section, shall be ineligible for any form of assistance or benefit provided under title IV of the Higher Education Act of 1965.

"(2) In order to receive any grant, loan, or work assistance under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), a person who is required under section 3 to present himself for and submit to registration under such section shall file with the institution of higher education which the person intends to attend, or is attending, a statement of compliance with section 3 and regulations issued thereunder.

"(3) The Secretary of Education, in agreement with the Director, shall prescribe methods for verifying such statements of compliance filed pursuant to paragraph (2). Such methods may include requiring institutions of higher education to provide a list to the Secretary of Education or to the Director of persons who have submitted such statements of compliance.

"(4) The Secretary of Education, in consultation with the Director, shall issue regulations to implement the requirements of this subsection. Such regulations shall provide that any person to whom the Secretary of Education proposes to deny assistance or benefits under title IV for failure to meet the registration requirements of section 3 and regulations issued thereunder shall be given notice of

the proposed denial and shall have a suitable period (of not less than thirty days) after such notice to provide the Secretary with information and materials establishing that he has complied with the registration requirement under section 3. Such regulations shall also provide that the Secretary may afford such person an opportunity for a hearing to establish his compliance or for any other purpose.".

(b) The amendment made by subsection (a) shall apply to loans, grants, or work assistance under title IV of the Higher Education Act for periods of instruction beginning after June 30, 1983.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action File No. 3-82-1670

JOHN DOE, RICHARD ROE, and PAUL POE,
INTERVENOR-PLAINTIFFS

v.

SELECTIVE SERVICE SYSTEM, MAJOR-GENERAL THOMAS K. TURNAGE, Director, and UNITED STATES DEPARTMENT OF EDUCATION, TERRELL H. BELL, Secretary, DEFENDANTS

ANSWER

The Selective Service System, Major-General Thomas K. Turnage, Director, and the United States Department of Education, Terrell H. Bell, Secretary, answer the complaint of intervenor-plaintiffs John Doe, Richard Roe, and Paul Poe, as follows:

First Defense

Intervenor-plaintiffs lack standing to sue.

Second Defense

The complaint of intervenor-plaintiffs does not raise a justiciable "case" or "controversy" under Article III of the Constitution.

Third Defense

The Court lacks jurisdiction over the subject matter of this lawsuit.

Fourth Defense

The complaint of intervenor-plaintiffs fails to state a claim upon which relief can be granted.

Fifth Defense

Defendants answer the numbered paragraphs of the complaint of intervenor-plaintiffs as follows:

1. This paragraph contains intervenor-plaintiffs' description of the lawsuit as to which no answer is required, but if an answer is deemed required, deny.

2. Deny.

3-6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in these paragraphs.

7. Deny.

8. Admit.

9. Admit.

10. Admit.

11. Deny, except to admit that on September 8, 1982, Congress enacted and the President approved the Department of Defense Authorization Act of 1983, Pub. L. No. 97-252, 96 Stat. 748, and the Court is respectfully referred to that law for a full statement of its contents.

12-16. These paragraphs refer to provisions of Public Law 97-252 whose existence defendants admit, and the Court is respectfully referred to that law for a full statement of its contents.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

15-29. Deny.

Defendants deny that relief or remedy should be granted to intervenor-plaintiffs.

Defendants specifically deny all allegations of the complaint of intervenor-plaintiffs not previously answered.

Having fully answered the complaint of intervenor-plaintiff, defendants pray that this action be dismissed

and that the Court grant such other further relief to the defendants as may be appropriate.

Respectfully submitted,

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Assistant Attorney General
JAMES M. ROSENBAUM
United States Attorney

/s/ Brook Hedge
BROOK HEDGE
Branch Director

/s/ Neil H. Koslowe
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action File No. 3-82-1670

JOHN DOE, RICHARD ROE, and PAUL POE,
INTERVENOR-PLAINTIFFS

v.

SELECTIVE SERVICE SYSTEM, MAJOR-GENERAL THOMAS K. TURNAGE, Director, and UNITED STATES DEPARTMENT OF EDUCATION, TERRELL H. BELL, SECRETARY, DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on the 27th day of January, 1983, I served defendants First Set of Interrogatories to Intervenor-Plaintiffs, First Request for Production of Documents, and Answer, upon opposing counsel, by causing copies to be mailed by first-class mail to:

William J. Keppel, Esq.
James B. Lynch, Esq.
James E. Dorsey, III, Esq.
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, Minnesota 55402

/s/ Neil H. Koslowe
NEIL H. KOSLOWE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

Civil Action No. ———

BRADLEY BOE, CARL COE, AND FRANK FOE, PLAINTIFFS

v.

SELECTIVE SERVICE SYSTEM,
MAJOR-GENERAL THOMAS K. TURNAGE, Director,

and

UNITED STATES DEPARTMENT OF EDUCATION,
TERREL H. BELL, Secretary, DEFENDANTS.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs, through their attorneys, for their Complaint against defendants, state and allege as follows:

1. This is a civil action seeking to enjoin defendants from implementing and enforcing § 1113 of the Department of Defense Authorization Act of 1983, Pub. L. No. 97-252, 96 Stat. 748 (1982), to be codified at 50 U.S.C. App. § 462, and any regulations promulgated thereunder, and seeking a declaratory judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 declaring that Section 1113 as cited above is unconstitutional under the Constitution of the United States, Art. I, § 9; the Fifth and Sixth Amendments thereof; and violative of the Privacy Act of 1974, 5 U.S.C. § 552a.

JURISDICTION

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331.

VENUE

3. Plaintiffs are all residents of the State of Minnesota. Venue properly lies with this Court pursuant to 28 U.S.C. § 1391(e)(4).

THE PARTIES

4. Plaintiff Bradly Boe is a male resident of Minnesota who is 21 years of age. He is currently a full time student at a college or university in Minnesota. He has received financial assistance under Title IV of the Higher Education Act of 1965, and he intends to apply for financial aid under Title IV for the 1983-84 school year. He will be unable to complete his education at his college or university unless he receives financial aid. He is subject to Section 3 of the Selective Service Act, has not presented himself for and submitted to all draft registration requirements under Section 3, and, therefore, cannot file with his college or university a truthful statement of compliance with Section 3 and regulations issued thereunder.

5. Plaintiff Carl Coe is a male resident of Minnesota who is 21 years of age. He is currently a full time student at a college or university in Minnesota. He has received financial assistance under Title IV of the Higher Education Act of 1965, and he intends to apply for financial aid under Title IV for the 1983-84 school year. He will be unable to complete his education at this college or university unless he receives financial aid. He is subject to Section 3 of the Selective Service Act, has not presented himself for and submitted to all draft registration requirements under Section 3, and, therefore, cannot file with his college or university a truthful statement of compliance with Section 3 and regulations issued thereunder.

6. Plaintiff Frank Foe is a male resident of Minnesota who is 21 years of age. He is currently a full time student at a college or university in Minnesota. He has received financial assistance under Title IV of the Higher Education Act of 1965, and he intends to apply for financial aid under Title IV for the 1983-84 school year. He will be unable to complete his education at his college or university unless he receives financial aid. He is subject to Section 3 of the Selective Service Act, has not presented himself for and submitted to all draft registration requirements under Section 3, and, therefore, cannot file with his college or university a truthful statement of compliance with Section 3 and regulations issued thereunder.

7. Plaintiffs file this Complaint under fictitious names to protect themselves from possible self-incrimination and to protect their rights to privacy and also because the United States government has engaged in a policy of selective prosecution of open opponents of the draft.

8. Defendant Selective Service System is an agency of the United States. Defendant Major-General Thomas K. Turnage is the Director of the Selective Service System.

9. Defendant United States Department of Education is an agency of the United States. Defendant Terrell H. Bell is the Secretary of the United States Department of Education.

FACTUAL BACKGROUND

10. On July 2, 1980, then President Jimmy Carter issued Presidential Proclamation 4771 (45 Fed. Reg. 45257) requiring that certain male citizens of the United States and other males residing in the United States, unless exempted by the Military Selective Service Act, present themselves for registration according to a schedule based on their calendar year of birth.

11. On September 8, 1982, the United States Congress and the President of the United States approved the Department of Defense Authorization Act of 1983, Pub. L.

No. 97-252, 96 Stat. 748 (1982) (hereinafter "Defense Authorization Act"). As part of the Defense Authorization Act, Section 1113 was approved, amending by adding new Subsection 12(f) to the Military Selective Service Act (50 U.S.C. App. § 462) (hereinafter "Selective Service Act"). A copy of the amendment is attached as "Exhibit A" to this Complaint.

12. The new Section 12(f) of the Selective Service Act provides, *inter alia*, that any person failing to comply with any draft registration requirement established pursuant to Section 3 of the Selective Service Act, 50 U.S.C. App. § 453, shall be ineligible for any form of financial aid for post-secondary education provided under Title IV of the Higher Education Act of 1965, 20 U.S.C. § 1070 *et seq.* (hereinafter "Higher Education Act"); that any person required to register pursuant to Section 3 of the Selective Service Act must file a statement of compliance with draft registration requirements in order to receive such educational assistance; and that the Secretary of Education, in consultation with the Director of the Selective Service System, shall be charged with the implementation and enforcement of such provisions.

13. Section 12(f) of the Selective Service Act applies to all funds allocated under Title IV of the Higher Education Act beginning June 30, 1983.

14. The application process for financial aid for the 1983-84 school year commences in January 1983.

COUNT ONE

15. Section 1113 of the Defense Authorization Act improperly determines the guilt of and imposes punishment upon specific individuals or an easily ascertainable group without the protections of a judicial trial.

16. As such, Section 1113 of the Defense Authorization Act is a Bill of Attainder and violates Article I, Section 9 of the Constitution of the United States.

COUNT TWO

17. Section 1113 of the Defense Authorization Act improperly forces certain students either to incriminate themselves when applying for financial aid or penalizes them for invoking their Fifth Amendment right against self-incrimination.

18. Accordingly, Section 1113 of the Defense Authorization Act deprives individuals of their right against self-incrimination and violates the Fifth Amendment.

COUNT THREE

19. Section 1113 of the Defense Authorization Act will have a disproportionate impact on minorities.

20. Section 1113 of the Defense Authorization Act therefore violates equal protection requirements of the Fifth Amendment of the United States Constitution.

COUNT FOUR

21. Section 1113 of the Defense Authorization Act discriminates on the basis of wealth.

22. Section 1113 of the Defense Authorization Act therefore violates equal protection requirements of the Fifth Amendment of the United States Constitution.

COUNT FIVE

23. Only males between the ages of 18 and 26 will be affected by Section 1113 of the Defense Authorization Act.

24. Section 1113 of the Defense Authorization Act discriminates on the basis of age, and therefore violates the equal protection requirements of the Fifth Amendment of the United States Constitution.

COUNT SIX

25. Only male students will be affected by Section 1113 of the Defense Authorization Act.

26. Section 1113 of the Defense Authorization Act discriminates on the basis of sex, and therefore violates the equal protection requirements of the Fifth Amendment of the United States Constitution.

COUNT SEVEN

27. Section 1113 of the Defense Authorization Act results in the collection and transfer of private information.

28. Section 1113 of the Defense Authorization Act results in the illegal collection and transfer of private information, and this is violative of the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a.

COUNT EIGHT

29. Presidential Proclamation 4771 (45 Fed. Reg. 45257) was neither expressly nor impliedly exempted from the 30 day notice and comment requirement of 50 U.S.C. § 463(b). Since it became effective 21 days after it was published, it is invalid.

30. There is no valid requirement for persons to register under the Selective Service Act.

31. Denial of federal financial aid pursuant to Section 1113 of the Defense Authorization Act violates due process in that it denies federal financial assistance for post-secondary education for the failure to certify compliance with an invalidly promulgated Presidential Proclamation.

WHEREFORE, Plaintiffs pray that:

1. Section 1113 of the Defense Authorization Act be adjudged and declared overly broad and unconstitutional under Article I, Section 9, the Fifth and Sixth Amendments to the Constitution of the United States; and violative of the Privacy Act of 1974, 5 U.S.C. § 552a.

2. Defendants be permanently enjoined from implementing and enforcing the provisions of Section 1113 of the Defense Authorization Act, including the promulgation of any regulations thereunder;

3. Plaintiffs be awarded their costs and disbursements of this action, including reasonable attorneys' fees; and

4. This Court grant such other relief as it deems appropriate and equitable.

Dated: January 26, 1983.

/s/ E. Gail Suchman
E. GAIL SUCHMAN

/s/ Daniel W. Lass
DANIEL W. LASS
Attorneys, Through The Minnesota Public Interest Research Group, For Plaintiffs
2412 University Avenue Southeast
Minneapolis, Minnesota 55414
(612) 376-7554

VERIFICATION

I have personally reviewed this Complaint of Plaintiffs with each of them, and each has read it and knows the contents thereof; all have sworn that it is true and correct to the best of their knowledge.

/s/ E. Gail Suchman
E. GAIL SUCHMAN

ENFORCEMENT OF MILITARY SELECTIVE SERVICE ACT

SEC. 1113. (a) Section 12 of the Military Selective Service Act (50 U.S.C. App. 462) is amended by adding after subsection (e) the following new subsection:

"(f) (1) Any person who is required under section 3 to present himself for and submit to registration under such section and fails to do so in accordance with any proclamation issued under such section, or in accordance with any proclamation issued under such section, or in accordance with any rule or regulation issued under such section, shall be ineligible for any form of assistance or benefit provided under title IV of the Higher Education Act of 1965.

"(2) In order to receive any grant, loan, or work assistance under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), a person who is required under section 3 to present himself for and submit to registration under such section shall file with the institution of higher education which the person intends to attend, or is attending, a statement of compliance with section 3 and regulations issued thereunder.

"(3) The Secretary of Education, in agreement with the Director, shall prescribe methods for verifying such statements of compliance filed pursuant to paragraph (2). Such methods may include requiring institutions of higher education to provide a list to the Secretary of Education or to the Director of persons who have submitted such statements of compliance.

"(4) The Secretary of Education, in consultation with the Director, shall issue regulations to implement the requirements of this subsection. Such regulations shall provide that any person to whom the Secretary of Education proposes to deny assistance or benefits under title IV for failure to meet the registration requirements of section 3 and regulations issued thereunder shall be given notice of the proposed denial and shall have a suitable period

(of not less than thirty days) after such notice to provide the Secretary with information and materials establishing that he has complied with the registration requirement under section 3. Such regulations shall also provide that the Secretary may afford such person an opportunity for a hearing to establish his compliance or for any other purpose.".

(b) The amendment made by subsection (a) shall apply to loans, grants, or work assistance under title IV of the Higher Education Act for periods of instruction beginning after June 30, 1983.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Civil Action File No. 3-83-100

BRADLEY BOE, CARL COE, and FRANK FOE, PLAINTIFFS

v.

SELECTIVE SERVICE SYSTEM,
MAJOR-GENERAL THOMAS K. TURNAGE, Director, and
UNITED STATES DEPARTMENT OF EDUCATION,
TERREL H. BELL, Secretary, DEFENDANTS

ANSWER

The Selective Service System, Major-General Thomas K. Turnage, Director, and the United States Department of Education, Terrell H. Bell, Secretary, answer the complaint of plaintiffs Bradley Boe, Carl Coe, and Frank Foe as follows:

First Defense

Plaintiffs lack standing to sue.

Second Defense

The complaint does not raise a justiciable "case" or "controversy" under Article III of the Constitution.

Third Defense

The Court lacks jurisdiction over the subject matter of this lawsuit.

Fourth Defense

The complaint fails to state a claim upon which relief can be granted.

Fifth Defense

Defendants answer the numbered paragraphs of the complaint as follows:

1. This paragraph contains plaintiffs' description of the lawsuit as to which no answer is required, but if an answer is deemed required, deny.

2. Deny.

3-6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in these paragraphs.

7. Deny.

8. Admit.

9. Admit.

10. Admit.

11. Deny, except to admit that on September 8, 1982, Congress enacted and the President approved the Department of Defense Authorization Act of 1983, Pub. L. No. 97-252, 96 Stat. 748, and the Court is respectfully referred to that law for a full statement of its contents.

12-13. These paragraphs refer to provisions of Public Law 97-252 whose existence defendants admit, and the Court is respectfully referred to that law for a full statement of its contents.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment in this paragraph.

15-31. Deny.

Defendants deny that any relief or remedy should be granted to plaintiffs.

Defendants specifically deny all allegations of the complaint not previously answered.

Having fully answered the complaint, defendants pray that this action be dismissed and that the Court grant

such other and further relief to the defendants as may be appropriate.

Respectfully submitted,

J. PAUL MCGRATH
Assistant Attorney General

JAMES M. ROSENBAUM
United States Attorney

/s/ Brook Hedge
BROOK HEDGE
Branch Director

/s/ Neil H. Koslowe
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Civil Action File No. 3-83-100

BRADLEY BOE, CARL COE, and FRANK FOE, PLAINTIFFS

v.

SELECTIVE SERVICE SYSTEM,
MAJOR-GENERAL THOMAS K. TURNAGE, Director, and
UNITED STATES DEPARTMENT OF EDUCATION,
TERREL H. BELL, Secretary, DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on this 31st day of January, 1983, I served defendants First Set of Interrogatories to Plaintiffs, First Request for Production of Documents, and Answer, upon opposing counsel, by causing copies to be mailed by first-class mail to:

Ms. E. Gail Suchman
Daniel W. Lass, Esq.
Minnesota Public Interest Research Group
2412 University Avenue, S.E.
Minneapolis, Minnesota 55414

/s/ Neil H. Koslowe
NEIL H. KOSLOWE

SUPREME COURT OF THE UNITED STATES

No. 83-276

SELECTIVE SERVICE SYSTEM, ET AL., APPELLANTS

v.

MINNESOTA PUBLIC INTEREST RESEARCH GROUP, ET AL.;

and

SELECTIVE SERVICE SYSTEM, ET AL., APPELLANTS

v.

BRADLEY BOE, ET AL.

Appeal from the United States District Court
for the District of Minnesota

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

December 5, 1983

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